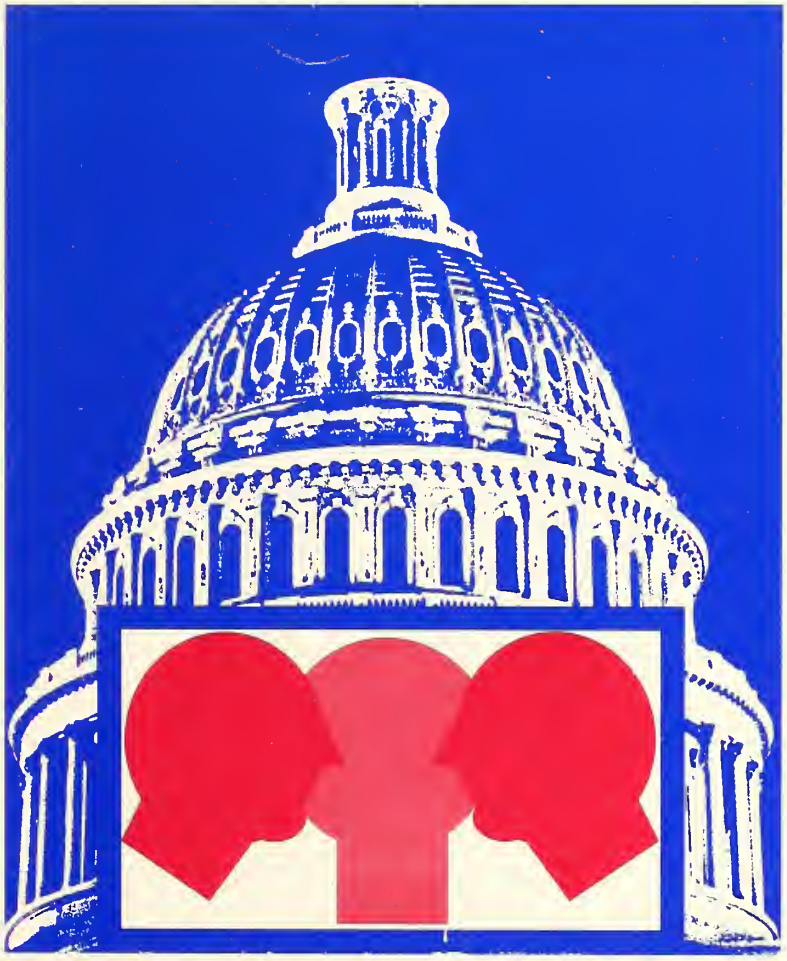
THIRD PARTY LIABILITY

A State's Opportunity



United States Department of Health and Human Services
Health Care Financing Administration
Bureau of Quality Control

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FROM THE DESK OF FRED SCHUTZMAN

DIRECTOR, BUREAU OF QUALITY CONTROL
HEALTH CARE FINANCING ADMINISTRATION

We have prepared this brochure for State officials and other interested parties involved in making decisions about resource investments in the Medicaid program.

Third party liability (TPL) is one of the Health Care Financing Administration's major Medicaid initiatives. TPL constitutes one of the very few Medicaid revenue producing activities of which States can take advantage in these days of State budgetary constraints. The savings generated by this activity benefit the State, the taxpayer, and the Medicaid recipient. In this era of rising health care costs, TPL is an important health care cost containment initiative.

It is with these thoughts in mind that I wish to share with you, the reader, the many exciting and innovative aspects of the TPL program. As you will see, many States are already realizing millions of dollars in savings.

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THIRD PARTY LIABILITY

A State's Opportunity

Second Edition

Health Care Financing Administration
Bureau of Quality Control
Baltimore, Maryland

Third Party Liability

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Third Party Liability

I. WHAT IS THIRD PARTY LIABILITY?

- Third party liability refers to the legal obligation of certain entities or individuals to pay the medical claims of Medicaid recipients before Medicaid pays these claims.

- Third parties (sources of health care and liability coverage) include:
  - -- private health insurance,
  - -- employment-related health insurance,
  - -- medical support from absent parents,
  - -- automobile insurance (including no-fault insurance),
  - -- court judgments or settlements from a liability insurer,
  - -- State workers' compensation,
  - -- first party probate-estate recoveries,
  - -- long-term care insurance, and
  - -- other Federal programs.

- Medicaid pays only after the above sources have met their legal obligation to pay; i.e., Medicaid is payer of last resort.

Third Party Liability

- **Every Medicaid jurisdiction is required by section 1902(a)(25) of the Social Security Act to pursue the legal liability of third party payers.**

  -- Applicants and recipients are required by law, as a condition of eligibility, to authorize the State to pursue and make recovery from liable third parties on their behalf.

  -- Applicants and recipients are required by law to provide information about any health care coverage they may have available to them.

- **The two methods States use to handle medical claims involving TPL are cost avoidance and postpayment recovery.**

  -- Cost avoidance is avoiding payment of Medicaid claims when insurance is available. The provider of services is required to bill and collect from liable third parties before sending the claim to Medicaid.

  -- Postpayment recovery, or "pay and chase," occurs when Medicaid pays the recipient's medical bills and then attempts to recover from liable third parties. This usually happens when Medicaid is not aware of the other insurance until after a claim is paid.

II. WHY SHOULD TPL BE IMPORTANT TO YOU?

- **In most States, Medicaid is the single largest expenditure.** Recent Government estimates project Medicaid expenditures to exceed $66 billion (State and Federal funds) in fiscal year 1990.

- **TPL is an important health care cost containment measure.**

- **Third party savings can help put money back into State coffers.**

  -- In some States, monies recovered from third party collections are returned to the general revenue fund.

  -- In other States, monies recovered from third party collections are returned to the Medicaid program.

- **Aggressive pursuit of TPL can reduce the taxpayers' burden.** TPL shifts the payment of medical services to the legally liable private sector.

- **Pursuit of TPL is not detrimental to the recipient.**

  -- Savings can be generated without terminating eligibility.

  -- Recipients are not denied access to quality health care.

- **TPL savings can forestall reductions in provider reimbursement rates.**

III. WHAT KIND OF SAVINGS CAN BE EXPECTED FROM TPL?

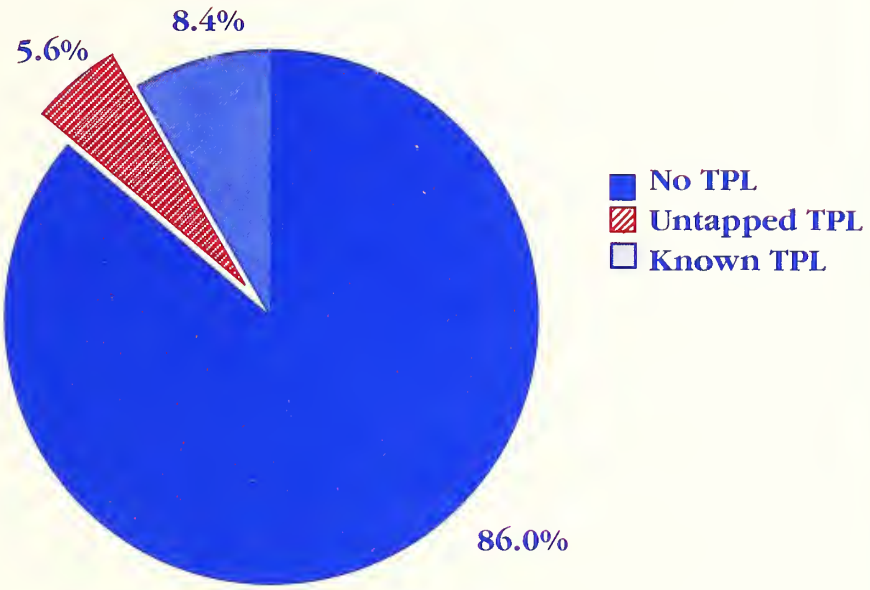
BENEFIT/COST ANALYSIS

- **The median rate of TPL savings to administrative costs exceeds 21:1. The savings rewards are much greater than the investment.**

- **Based on reports from 49 States, an average of 5 percent of program dollars were saved through TPL pursuit. Many States save even more.**

  -- Several States have reported savings of over 6 percent of program dollars. In a State with a billion dollar Medicaid budget, these TPL savings translate to $60 million. Even a smaller State with a $500 million program could realize savings of at least $30 million from an efficient TPL operation. Consider the possibility of realizing revenues of that magnitude in your State.

MEDICAID RECIPIENTS WITH OTHER HEALTH INSURANCE - 1988



Sources:

Research Institute Tabulations of March 1986
State Agency TPL Survey 1988

Medicaid Recipients with Other Health Insurance

- **Forty-six States recently reported that 8.4 percent of all Medicaid recipients in 1988 had a third party resource which was known by the State Medicaid Agencies.**
- **Based on available income and health care data, the above chart illustrates that there could be up to 14 percent of the entire Medicaid population with TPL.**
- **As your State identifies more TPL, revenues will increase.**

IV. IF TPL IS SO GREAT, WHY AREN'T STATES DOING MORE?

- **Many States have become more aggressive in their pursuit of TPL since 1981, when a government study reported significant untapped resources.**

- **However, State Medicaid agencies continue to identify obstacles they perceive as hampering their efforts to improve program effectiveness.**

  -- Pursuit of TPL requires up-front investment. State agencies often have difficulty convincing State decision makers to invest in a TPL program.

  -- Managing and operating a TPL program is not easy.

  - States must operate both cost avoidance and recovery operations.
  - The welfare worker at eligibility determination plays a big part in uncovering the existence of TPL.
  - Each health plan has its own rules which complicates the pursuit of TPL and cost avoidance.
  - Federal requirements must be adhered to.
  - Some providers balk at cost avoidance requirements.
    - It can be administratively burdensome for providers to bill third parties, although often they can achieve a higher reimbursement rate from private insurers than from Medicaid.
    - Providers want a quick turnaround time for payment of services, so in some States, it benefits them to bill Medicaid first.
    - Participating providers are prohibited from billing Medicaid recipients for other than State-required cost sharing amounts and deductibles.
  - An effective TPL program requires a sophisticated automatic system capability.

- **However, as previously discussed, the payoff can be great.**

V. WHAT IS THE FEDERAL GOVERNMENT DOING TO HELP?

- **We require a lot in the TPL area, but also allow a great deal of State flexibility.**

- **Congress has enacted Federal legislation that enables States to:**

  -- require TPL identification as a condition of eligibility, and

  -- recover from liable third parties on behalf of recipients (mandatory assignment of rights).

- **We published: "A Guide to Successful State Agency Practices" - a compilation of State TPL practices proven to be cost-effective.**

- **We provide a forum for the exchange of TPL information among State agency administrators.**

  -- We conduct national and regional TPL conferences, many in conjunction with the American Public Welfare Association.

  -- We make TPL presentations to national health organizations and associations, including the National Conference of State Legislatures and the National Association of Insurance Commissioners.

  -- We hold meetings with the State Medicaid Directors and State TPL Technical Advisory Group to discuss issues impacting TPL.

  -- We facilitate the exchange of best practices, training videos, and technical assistance among States.

- **We facilitate data matches with other Federal agencies to identify third party resources; e.g., with CHAMPUS (The Civilian Health and Medical Program of the Uniformed Services).**

Third Party Liability

- **We foster intradepartmental coordination:**

  -- Child support agencies are required to collect TPL information from those applying for child support services, and petition the court for medical support when available to the absent parent.

  -- The Social Security Administration collects TPL data from Supplemental Security Income applicants and recipients.

- **We talk with the insurance industry about meeting its legal obligations as payer before Medicaid.**

- **We assist States in pursuing certain recovery cases where there is a need for national intervention.**

VI. WHAT MAKES TPL WORK?

- **Conduct front-end identification.**

  - The key to saving Medicaid dollars through TPL lies in identifying other insurance available to recipients.

  - The most cost-effective manner in which to collect TPL information is during the initial eligibility interview process.

  - Identification of TPL at this time:

    - is more efficient because it becomes an integral part of the interview process and may eliminate the need for additional interviews,

    - enables the State to provide TPL information on the Medicaid identification card which facilitates cost avoidance, and

    - enables the State to cost avoid claims from the beginning.

  - Caseworkers need to be trained and encouraged to identify TPL and must understand the importance of pursuing TPL leads.

- **Conduct data matches.**

  - Automated data matches provide an expeditious method for identifying TPL missed during the intake process or which becomes available after eligibility has been established.

  - States are required to conduct data matches with State wage information collection agencies, the Social Security Administration wage and earnings files, with State title IV-A agencies (Aid to Families with Dependent Children (AFDC)), and with other State agencies.

  - Data matches with other State agencies may include: workers' compensation, industrial accident commission files, and the State motor vehicle accident report files.

- **Utilize cost avoidance whenever possible.**

  - An effective cost avoidance system reduces administrative costs associated with seeking reimbursement from a third party.

  - It improves the State's cash flow; i.e., it is always better to avoid paying money out than to pay out and attempt to recoup.

  - It negates the need to attempt recovery from certain insurance companies which do not recognize Medicaid's status as last payer.

  - Cost avoidance often enables a State to avoid 100 percent of the cost of the services rendered. Postpayment recovery usually results in only a percentage of the reimbursement being recouped; e.g., 80 percent.

  - By using the cost avoidance method of payment, TPL staff are available to perform other necessary TPL recovery activities; e.g., casualty and liability identification and recovery.

- **Invest in your system capabilities.**

  - State of the art hardware and software enable the State to identify insurance types and associated covered and noncovered services.

  - System improvements:

    - facilitate cost avoidance,

    - allow the State to distinguish deductibles and coinsurance applicable to services,

    - allow the State to establish prepayment edits in order to distinguish the appropriate payment method; e.g., cost avoidance or postpayment recovery,

- create a more reliable and expeditious method for collections and adjustments associated with postpayment activities,

- facilitate timely and accurate updates to the Medicaid eligibility file resulting from data matches with insurance companies and other State and local agencies, and

- facilitate electronic claims processing.

-- Investing in your system capabilities is not a risky business. Future savings are generated.

o **Ensure automated integration of TPL data from data matches and other sources.**

o **Perform effective followup techniques.**

-- Techniques may include:

- contacts with past and present recipient employers and unions for verification of third party resources,

- review of trauma codes to detect potential casualty/liability claims and follow up with the recipient to determine if another party is at fault,

- review of local newspapers and records of settled court cases involving casualty/liability claims, and

- recontact of third party insurers if responses are not received within at least 90 days of billing.

- **Determine and utilize cost-effective thresholds on recovery actions.**

  -- Low thresholds may result in pursuing claims which cost more to process than will be recouped. Conversely, if thresholds are too high, you lose money.

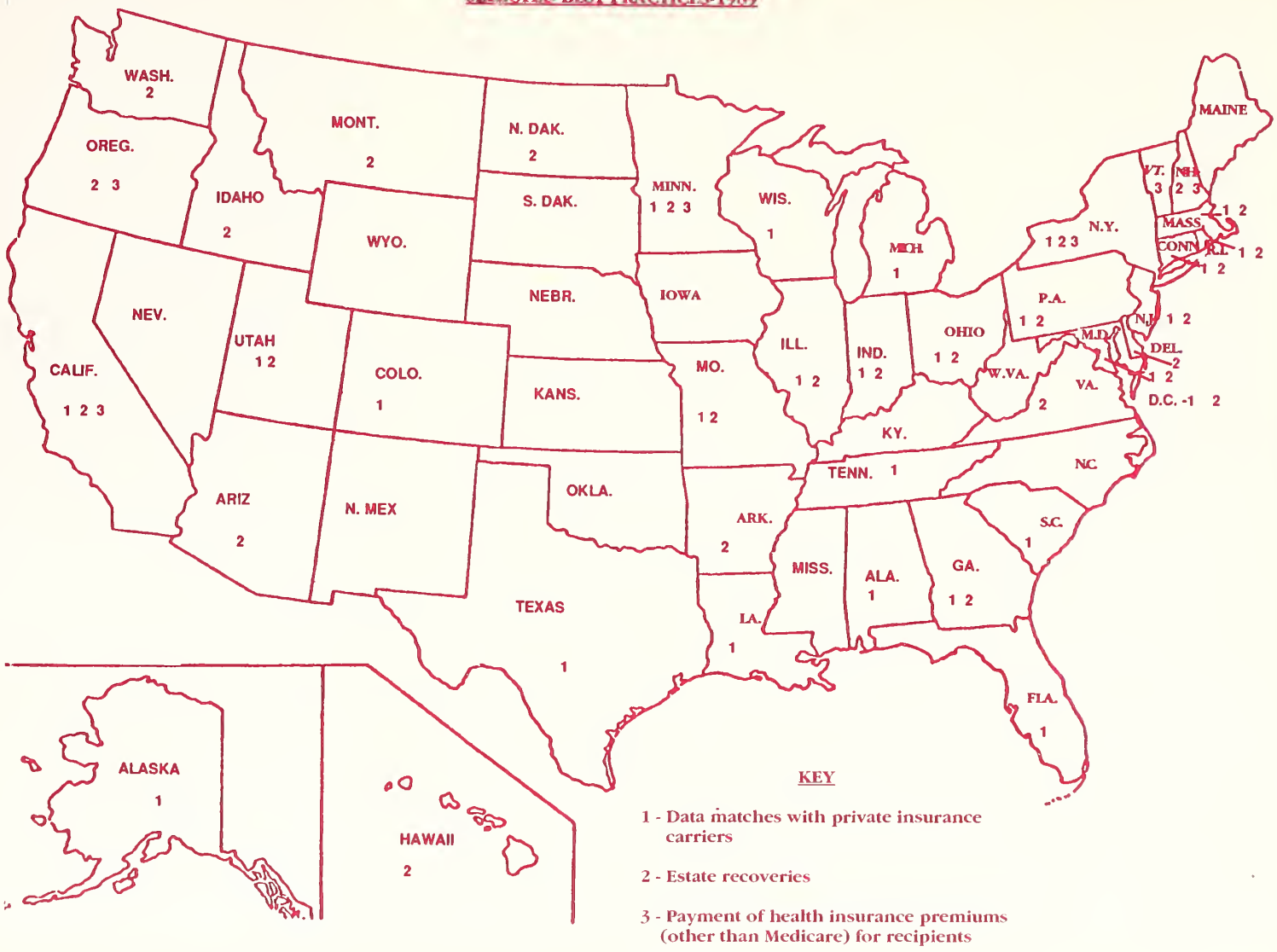
  -- Most States utilize thresholds under $50 for health insurance and $100 for casualty claims.

  -- Claims that fall under the threshold can be accumulated; when the total meets the threshold, they can be sent to the third party for recovery.

- **Adopt proven TPL practices (administrative practices and model legislation).**

  -- Use the "State Agency Successful Practices Guide," an excellent compilation of State initiated TPL practices that have proven to be most cost-effective.

  -- Examine your State's standing on legislation and successful practices on the following two charts.


SELECTED BEST PRACTICES-1989
WASH. 2
OREG. 2 3
CALIF. 1 2 3
IDAHO 2
NEV.
MONT. 2
WYO.
UTAH 1 2
ARIZ 2
COLO. 1
N. MEX
N. DAK. 2
S. DAK.
NEBR.
KANS.
OKLA.
TEXAS 1
MINN. 1 2 3
IOWA
MO. 1 2
ARK. 2
LA. 1
WIS. 1
ILL. 1 2
MISS.
IND. 1 2
ALA. 1
MICH. 1
OHIO 1 2
TENN. 1
GA. 1 2
FLA. 1
W.VA. 2
KY.
S.C. 1
N.C.
VA.
N.Y. 1 2 3
P.A. 1 2
M.D.
D.C. -1 2
DEL. 2
N.J. 1 2
MAINE
VT. 3
N.H. 2 3
MASS. -1 2
CONN.
R.I. 1 2
1 2
ALASKA 1
HAWAII 2
KEY
1 - Data matches with private insurance carriers
2 - Estate recoveries
3 - Payment of health insurance premiums (other than Medicare) for recipients

Some Selected State Practices That Work

- **Certain State agencies have incorporated third party identification, cost avoidance, and recovery practices that are proven revenue makers into their third party programs. States report that the savings generated by these activities far exceed the associated implementation and operational costs.**

- **Featured on the preceding chart are three selected best practices you may wish to consider for your State.**

  1. **Data Matches With Private Insurance Companies**—Some States are conducting automated data matches between Medicaid eligibility files and lists of enrollees in private insurance plans. This practice enables States to identify third party resources that slip through the cracks of the eligibility intake process. California's experience with this type of data match provides an excellent example of its value. The first data match performed with Blue Cross of California provided 20,000 new TPL leads.

  2. **Probate Recoveries From Estates of Deceased Recipients (First Party Liability)** — States track the value of recipient real property and, upon the death of the recipient, attempt to obtain repayment from the estate for the cost of services given to the recipient prior to his or her death. An attractive feature of estate recoveries is that States can be compensated for medical costs normally not covered by insurance, such as nursing home care. Here are examples of just how cost-effective this best practice can be:

STATE	ANNUAL SAVINGS	COSTS	COST RATIO
CALIFORNIA [1/]	$ 4,000,000	$ 338,000	12:1
MARYLAND	$ 1,200,000	$ 104,402	11:1
MONTANA	$ 250,000	$ 8,000	31:1
OREGON	$ 2,200,000	$ 213,000	10:1

NOTE: Savings and costs are for 1986. The costs are ongoing in nature; they exclude one-time implementation costs.

[1/] California is currently reporting $24,000,000 in annual probate recoveries.

3. **Payment of Health Insurance Premiums by the State** - Some States continue to pay health insurance premiums for Medicaid recipients who have health insurance which provides medical benefits that are also covered under the Medicaid program. These premium payments are funded by Medicaid when a cost effectiveness evaluation has been made, usually determining that the payment of the premiums will reduce Medicaid expenditures by more than the cost of the premiums.

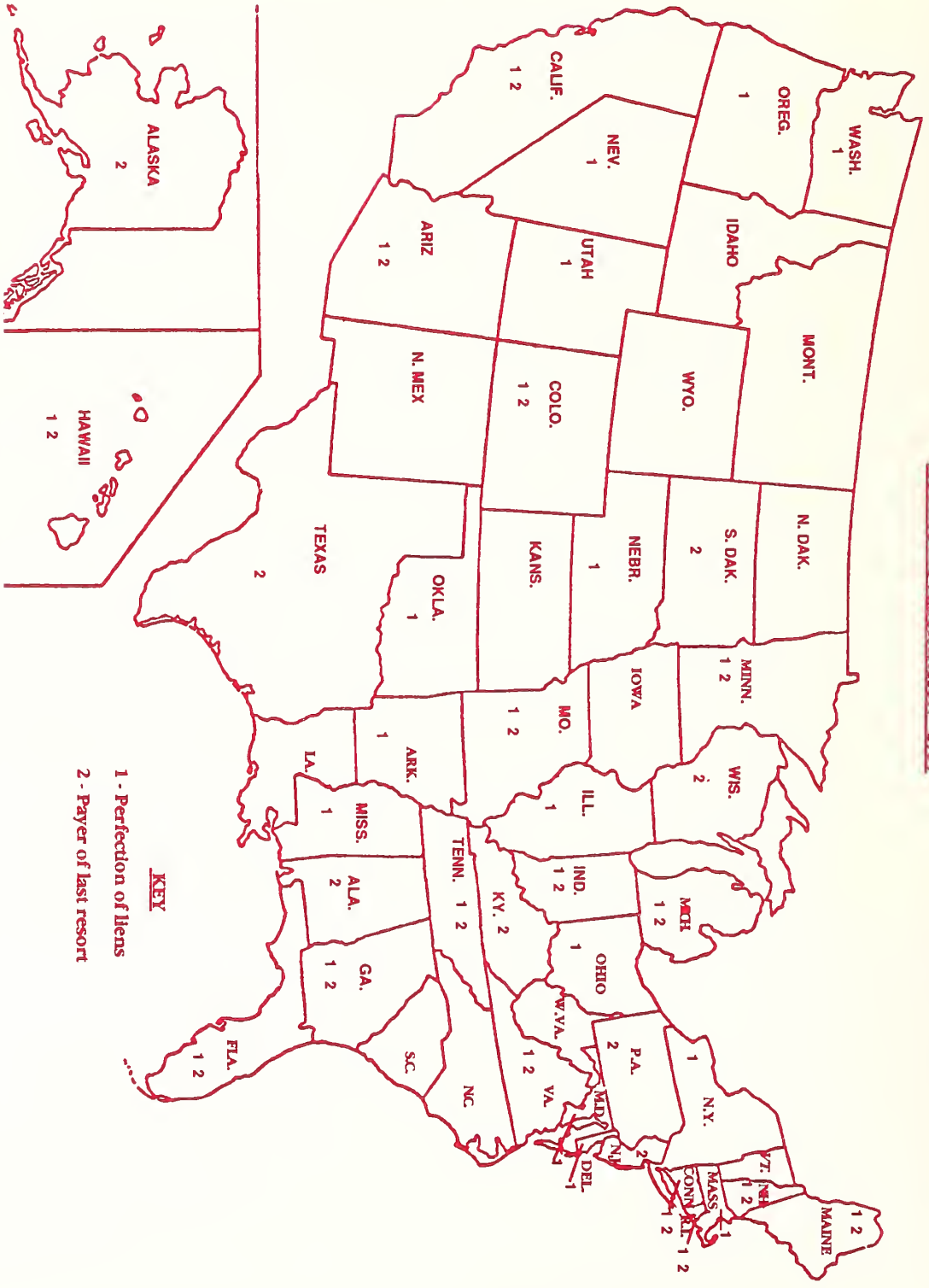
o **Following are some other best practices you may wish to consider:**

-- **Release of Information by Providers** - Some States require providers to contact the State agency before responding to requests for medical information from insurance companies, attorneys, and other third parties. States use this practice as a "safety net" to catch liability situations that other TPL identification procedures miss.

-- **Use of Computer Generated Payment Histories in Lieu of Invoices for Billing Insurance Companies** - Negotiations with the Health Insurance Association of America and member commercial insurance companies and certain Blue Cross/Blue Shield plans resulted in their acceptance of State computer generated claims histories as billing documents.

-- **Data Matches With Other State Agencies to Identify Health Insurance Coverage** - Several States extend health and major medical coverage benefits to retirees. Where State agencies that monitor these programs have a usable data base, Medicaid agencies can match against it to locate Medicaid recipients who are covered by another State program.

Third Party Liability



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State Legislation

- **Enactment of State legislation is a key element in a State's pursuit of TPL. Although it is not always possible to evaluate program savings that are directly attributable to legislative enactment, legislation is often the catalyst that gives States the necessary leverage to improve their TPL programs.**

  -- **Subrogation/Assignment of Rights To Medicaid Agencies** - Athough subrogation laws vary greatly from State to State, they are the legislative backbone of a TPL program. Subrogation legislation allows a State to stand in place of its Medicaid recipients for the purpose of filing third party claims. Assignment of rights laws reinforce the Federal requirement that, as a condition of eligibility, Medicaid recipients must assign their rights to medical support/payments to the State. Both types of legislation have the same end result: To allow the State to stand in for the recipient, thus facilitating State recovery efforts. All States currently have either subrogation or assignment of rights laws.

- **Here are two other examples of important State TPL legislation which have helped States realize greater savings. They are highlighted on the preceding chart.**

  1. **Lien Laws** - An offshoot of subrogation, lien laws give the State statutory authority to perfect liens against judgments made in favor of a Medicaid recipient. Liens enable a State to recover up to the amount the State has paid on behalf of the recipient for medical services. Lien laws can also facilitate recovery for services normally not covered by private health insurance, such as nursing home care.

  2. **Payer of Last Resort** - Also related to subrogation laws, these laws state unequivocally that Medicaid is last payer. Some States place this language within the subrogation statute, while others have separate and distinct "last payer" laws. This legislation has been particularly helpful to States dealing with insurance companies which do not always recognize Medicaid's "last payer" status unless that status is specifically spelled out in State law.

- **You may also wish to consider the following model legislation:**

  -- Co-endorsement of Insurance Checks by Providers - Requires that all checks from health insurance companies regulated under State law be made payable to and endorsed by both the insured and the provider of service. Some insurance companies restrict payment of an insurance claim to the insured or the policyholder. This law assures that the provider receives the third party payment.

  -- Child Support Enforcement - Several States have enacted legislation which requires the absent parent to cover the minor child on any health or dental insurance plan made available through employment or a union. Some States also require insurance companies to cover minor children when they are not living in the policyholders' households.

VII. WHAT ARE THE CHARACTERISTICS OF A SUCCESSFUL TPL PROGRAM?

- **Each State's TPL program is unique in its configuration and administration.**

- **A survey of State TPL activities reveals that highly successful TPL programs possess the following (not all inclusive) traits:**

  -- TPL savings to program expenditure and to administrative expenditure ratios above the medians;

  -- health insurance and liability thresholds between $0 and $100;

  -- use of Medicaid identification cards with TPL identifiers;

  -- use of trauma code screens with detailed followup techniques;

  -- performance of six or more data matches;

  -- State legislation which authorizes the State Medicaid agency to recoup Medicaid expenditures through subrogation, specifically identifies Medicaid as last payer, and permits probate recoveries and the perfecting of liens; and

  -- system capabilities that effectively enable the State to deny payment of claims with TPL.

VIII. WHAT CAN YOU DO TO IMPROVE TPL PROGRAM PERFORMANCE?

- Demonstrate commitment.
- Devote sufficient resources.
- Ensure that the eligibility determination process is contributing its share of TPL identification.
- Request TPL savings reports.
- Provide visibility; make TPL an agenda topic for budget meetings, legislative hearings, and discussions on health care issues.
- Develop a strong legislative base.
  - -- Determine what impact other State laws have on the TPL program.
  - -- Introduce needed legislation.
- Contact your respective HCFA regional office for additional information regarding TPL. For your reference, a list of HCFA regional TPL coordinators is provided on the next page.

IX. WHOM CAN YOU CONTACT?

HEALTH CARE FINANCING ADMINISTRATION

Regional Medicaid Third Party Liability Coordinators

Region	Contact	Address	Telephone No.
Boston (I)	Harold Finn	Division of Medicaid Room 1309 JFK Federal Building Boston, Massachusetts 02203	(617) 565-1190
New York (II)	Stephen Shaw	Division of Program Operations Room 3811 26 Federal Plaza New York, New York 10278	(212) 264-4459
Philadelphia (III)	Kenneth Albrecht	Division of Medicaid 3535 Market Street P. O. Box 7760 Philadelphia, Pennsylvania 19101	(215) 596-0601
Atlanta (IV)	Lonetta Essary	Division of Program Operations Suite 701 101 Marietta Tower Atlanta, Georgia 30323	(404) 331-0111
Chicago (V)	Edward Zawislak	Division of Program Operations 16th Floor 105 West Adams Street Chicago, Illinois 60603-6201	(312) 353-9860
Dallas (VI)	James Ogé	Division of Program Operations Room 2000 1200 Main Tower Building Dallas, Texas 75202	(214) 767-6441

Third Party Liability

Region	Contact	Address	Telephone No.
Kansas City (VII)	Judith Flynn	Division of Medicaid New Federal Office Building Room 235 601 East 12th Street Kansas City, Missouri 64106	(816) 426-3407
Denver (VIII)	Sandra White	Division of Medicaid Federal Building Room 574 1961 Stout Street Denver, Colorado 80294	(303) 844-6216
San Francisco (IX)	Robert Kovash Langford Williams	Division of Medicaid 14th Floor 100 Van Ness Avenue San Francisco, California 94102	(415) 556-2191
Seattle (X)	Dennis Sexton Lavinia Peters	Division of Financial Operations 2201 Sixth Avenue Seattle, Washington 98121	(206) 442-8140 (206) 442-8154

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